

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

DUANE EUGENE CASH

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**Criminal No. 19-190
(Civil No. 22-1699)**

ORDER

Presently before the Court is Duane Eugene Cash’s pro se Motion to Vacate under 28 U.S.C. § 2255. ECF No. 1113. Mr. Cash alleges, in part, that his trial counsel was ineffective for failing to file a direct appeal as directed by Mr. Cash. A Notice of Appeal, however, was filed on behalf of Mr. Cash four days after he was sentenced. ECF No. 1063. The Notice of Appeal was filed by the Clerk of Court as directed by Court Order. ECF No. 1062. Thus, Mr. Cash’s appeal is currently pending before the United States Court of Appeals for the Third Circuit.

For the following reasons the Court will dismiss Mr. Cash’s 2255 Motion without prejudice to filing a timely 2255 Motion after his conviction and sentence become final. A “collateral attack is generally inappropriate if the possibility of further direct review remains open.” Kapral v. United States, 166 F.3d 565, 570 (3d Cir. 1999). “A district court should not entertain a habeas corpus petition while there is an appeal pending in [the court of appeals] or in the Supreme Court. The reason for the rule is that disposition of the appeal may render the [habeas corpus writ] unnecessary.” Id. (brackets in original, citation omitted). “The outcome on direct review, even if not in the defendant's favor, may also cause the defendant to limit or rethink the claims that would be raised on collateral review, or even dissuade the defendant from seeking collateral review.” Id. at 572. “For these reasons, and to ensure the orderly administration of criminal proceedings, defendants have long been

discouraged from commencing § 2255 proceedings before the conclusion of direct review.”

Id. Accordingly, the following Order is entered.

AND NOW, this 6 th day of December 2022, Duane Eugene Cash’s Motion to Vacate Under 28 U.S.C. § 2255 is hereby DISMISSED, as premature, without prejudice to his right to timely file a 2255 motion after his conviction and sentence become final.

s/Marilyn J. Horan
Marilyn J. Horan
United States District Judge

cc: Duane Eugene Cash, Jr., pro se
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